

03/06/1996

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

MAR 06 1996

ROBERT H. SHUMWELL, CLERK
BY ll

CRYSTAL OIL COMPANY AND
CRYSTAL EXPLORATION AND
PRODUCTION COMPANY,
Plaintiffs,

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§
§

CASE NO. CV95-21155

vs.

JUDGE STAGG

ATLANTIC RICHFIELD COMPANY,
Defendant.

MAGISTRATE JUDGE PAYNE

ANSWER AND COUNTERCLAIM OF
DEFENDANT, ATLANTIC RICHFIELD COMPANY

NOW INTO COURT, through undersigned counsel, comes defendant, ATLANTIC RICHFIELD COMPANY ("ARCO" or "defendant"), and in answer to the Original Complaint for Declaratory Judgment ("Complaint") of CRYSTAL OIL COMPANY ("Crystal Oil") and CRYSTAL EXPLORATION AND PRODUCTION COMPANY ("Crystal Exploration"), denies each and every allegation contained therein, except such as may be hereinafter specifically admitted, and without waiving any motions or defenses, defendant replies to the separately numbered paragraphs of the Complaint as follows:

JURISDICTION AND VENUE

1. The allegations of paragraph 1 of the Complaint are admitted.

2. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 2 of the Complaint, and therefore denies same.

3. ARCO admits that venue is technically proper in the Western District of Louisiana, but moves to transfer to a significantly more convenient venue for reasons identified in the Motion to Transfer Case to the United States District Court for the District of Colorado and Memorandum in support thereof filed herewith.

PARTIES

4. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 4 of the Complaint, and therefore denies same.

5. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 5 of the Complaint, and therefore denies same.

6. The allegations of paragraph 6 of the Complaint are admitted.

FACTS

7. ARCO admits the first two sentences of paragraph 7 of the Complaint. ARCO admits the allegations of the third sentence of paragraph 7 of the Complaint, except that ARCO affirmatively states that the entity known as Rico-Argentine Mining Company continued operations at the Rico Site after 1973.

8. ARCO admits the last sentence of paragraph 8 of the Complaint. ARCO is without knowledge and information sufficient to respond to the allegations contained in the first two sentences of paragraph 8 of the Complaint, and therefore denies same.

9. The allegations of paragraph 9 of the Complaint are denied.

10. The allegations of paragraph 10 of the Complaint are admitted.

11. The allegations of paragraph 11 of the Complaint are denied.

12. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 12 of the Complaint, and therefore denies same. Further answering, ARCO specifically denies, as a matter of law, that the alleged Order Confirming Plan discharged Crystal Oil from any environmental liabilities which a claimant did not fairly contemplate at the time of the bankruptcy proceeding.

13. The allegations of the first sentence of paragraph 13 of the Complaint are admitted. The allegations of the second sentence of paragraph 13 of the Complaint are denied.

14. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 14 of the Complaint, and therefore denies same.

15. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 15 of the Complaint, and therefore denies same.

CLAIM FOR DECLARATORY JUDGMENT UNDER CONTRACT

16. ARCO is without knowledge and information sufficient to respond to the allegation in paragraph 16 of the Complaint that as of August 17, 1980, Rico Argentine Mining Company operated as a division of CEPCO, and therefore denies same. The allegations of paragraph 16 of the Complaint are otherwise admitted, except ARCO denies that the Closing Agreement was the only document which memorialized the sale between the parties.

17. The allegations of paragraph 17 of the Complaint constitute a conclusion of law and require no answer on the part of defendant. Should an answer be required, said allegations are denied.

18. The allegations of the last sentence of paragraph 18 of the Complaint are denied for the reason that the Closing Agreement is in writing and is best evidence of its contents. The remaining allegations of paragraph 18 of the Complaint are denied.

19. The allegations of the indented quote in paragraph 19 of the Complaint are denied for the reason that the Closing Agreement is in writing and is best evidence of its contents.

The remaining allegations of paragraph 19 of the Complaint are denied.

20. The allegations of paragraph 20 of the Complaint are denied.

21. ARCO is without knowledge and information sufficient to respond to the allegations contained in paragraph 21 of the Complaint, and therefore denies same.

22. ARCO is without knowledge and information sufficient to respond to the allegations contained in the first sentence of paragraph 22 of the Complaint, and therefore denies same. The second sentence of paragraph 22 of the Complaint is denied.

**CLAIM FOR DECLARATORY JUDGMENT
DUE TO DISCHARGE IN BANKRUPTCY**

23. Responding to the allegations of Paragraph 23 of the Complaint, ARCO denies that it had actual or constructive notice during the Bankruptcy Case of the claims at issue in this litigation. The allegations of the first, fourth and sixth sentences of paragraph 23 of the Complaint are admitted. ARCO is without knowledge and information sufficient to respond to the allegations of the second, third and fifth sentences of paragraph 23 of the Complaint and therefore denies same.

24. ARCO is without knowledge and information sufficient to respond to the allegations of paragraph 24 of the Complaint and therefore denies same.

25. ARCO is without knowledge and information sufficient to respond to the allegations of paragraph 25 of the Complaint and therefore denies same.

26. ARCO denies that the claims at issue in the instant litigation were discharged. ARCO does not have knowledge and information sufficient to respond to the allegations of paragraph 26 of the Complaint and therefore denies same.

27. ARCO is without knowledge and information sufficient to respond to the allegations of paragraph 27 of the Complaint and therefore denies same.

28. The allegations of paragraph 28 of the Complaint constitute a conclusion of law and require no answer on the part of defendant. Should an answer be required, said allegations are denied.

29. The allegations of paragraph 29 of the Complaint are denied.

30. ARCO admits that it did not file any claim with respect to this matter in the bankruptcy proceeding or object to confirmation of Crystal Oil's Plan of Reorganization on that basis, but otherwise denies the allegations of paragraph 30 of the Complaint.

31. The allegations of paragraph 31 of the Complaint are denied.

32. ARCO is without knowledge and information sufficient to respond to the allegations contained in the first sentence of paragraph 32, and therefore denies same. The second sentence of paragraph 32 of the Complaint is denied.

AFFIRMATIVE DEFENSES

First Defense

Plaintiffs fail to state a claim upon which relief can be granted.

Second Defense

Plaintiffs' claims are barred by the doctrines of estoppel, waiver, laches and unclean hands.

Third Defense

Plaintiffs' declaratory judgment action must be dismissed, because plaintiffs are liable parties under CERCLA, and are therefore limited to claims seeking contribution under CERCLA § 113(f), 42 U.S.C. § 9613(f).

Fourth Defense

Plaintiffs have failed to mitigate their damages.

Fifth Defense

Plaintiffs caused and/or contributed to the injuries, damages, costs and conditions alleged in the Complaint.

Sixth Defense

The allocation of certain costs for NPDES permit violations contained in the Closing Agreement did not allocate CERCLA costs and does not implicate CERCLA Section 107(f).

Seventh Defense

ARCO assumed no liabilities in the Closing Agreement, and in particular assumed no CERCLA liabilities.

Eighth Defense

Crystal Oil's liability for clean up costs was not discharged or extinguished as a result of Crystal Oil's bankruptcy in 1986 because ARCO had not incurred CERCLA response costs for the Rico Site at that time and did not know and could not have fairly contemplated at the time of the 1986 bankruptcy that it would incur response costs or have a claim against Crystal Oil for environmental cleanup.

Ninth Defense

ARCO will rely upon all defenses that become available during discovery and at trial.

Tenth Defense

Plaintiffs' declaratory judgment claim fails to present a case or controversy and must be dismissed.

Eleventh Defense

This action has been brought in a court of inconvenient venue for the reasons identified in defendant's Motion to Transfer Case to the United States District Court for the District of Colorado and Memorandum in support thereof which have been filed herewith.

COUNTERCLAIM

AND NOW, assuming the position of plaintiff-in-counterclaim against CRYSTAL OIL COMPANY ("Crystal Oil" or "defendant-in-counterclaim") and CRYSTAL EXPLORATION AND PRODUCTION COMPANY ("Crystal Exploration" or "defendant-in-counterclaim"), defendant, ATLANTIC RICHFIELD COMPANY ("ARCO" or "plaintiff-in-counterclaim"), respectfully avers as follows:

General Allegations

1. Made defendants-in-counterclaim are Crystal Oil, a corporation organized and existing under the laws of the State of Louisiana, with its principal place of business in Shreveport, Louisiana; and Crystal Exploration, a corporation organized under the laws of the State of Florida, with its principal place of business in Shreveport, Louisiana.

2. This Court has subject matter jurisdiction of this counterclaim as it is a compulsory counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure and falls under this Court's ancillary jurisdiction.

3. ARCO brings this Counterclaim by virtue of the fact that it has been named a Defendant herein and the counterclaim arises out of the same transaction, occurrences and circumstances as set forth in Plaintiffs' Complaint.

4. Crystal Oil and Crystal Exploration each owned and/or operated or have owned and/or operated mines and related operations and facilities in or near Rico, Colorado ("Rico

Facilities") at a time where hazardous substances were disposed. There are or have been releases or threatened releases of hazardous substances into the environment from the Rico Facilities. Crystal Oil and Crystal Exploration have arranged for disposal of hazardous substances at the Rico Facilities. Crystal Oil and Crystal Exploration are each persons liable for response costs under § 107(a) of CERCLA.

First Counterclaim

5. ARCO has incurred response costs at the Rico Facilities that are necessary and consistent with the National Contingency Plan.

6. Crystal Oil and Crystal Exploration are each a liable party under CERCLA, and each is liable to ARCO for cost recovery under CERCLA (CERCLA § 107(a), 42 U.S.C. § 9607(a)) in an amount equal to any response costs that have been or will be incurred by ARCO in connection with the Rico Facilities, or pursuant to ARCO's rights under the common law or statutes of the State of Colorado.

7. ARCO seeks a judgment declaring each defendant-in-counterclaim liable to ARCO for cost recovery under CERCLA in an amount equal to any response costs that have been or will be incurred by ARCO in connection with the Rico Facilities.

8. Crystal Oil and Crystal Exploration are each a liable party under CERCLA, and each is liable to ARCO for contribution under CERCLA (CERCLA § 113(f), 42 U.S.C. § 9613(f))

in an amount equal to any liability or costs assessed against or incurred by ARCO in connection with the Rico Facilities that exceed ARCO's fair and equitable share of liability, if any, or pursuant to ARCO's rights under the common law or statutes of the State of Colorado.

9. ARCO seeks a judgment declaring each defendant-in-counterclaim liable to ARCO for contribution under CERCLA in an amount equal to any liability or costs assessed against or incurred by ARCO in connection with the Rico Facilities that exceed ARCO's fair and equitable share of liability, if any.

WHEREFORE, DEFENDANT, ATLANTIC RICHFIELD COMPANY, PRAYS that this Answer be filed, and that after due proceedings are had, that this Answer be deemed good and sufficient, and that there be judgment herein favor of defendant, ATLANTIC RICHFIELD COMPANY, rejecting the demands of plaintiffs, dismissing this suit with prejudice at the cost of plaintiffs.

PLAINTIFF-IN-COUNTERCLAIM, ATLANTIC RICHFIELD COMPANY, PRAYS that this Counterclaim be filed, that defendants-in-counterclaim, CRYSTAL OIL COMPANY and CRYSTAL EXPLORATION AND PRODUCTION COMPANY, be duly cited to appear and answer same, and, after due proceedings are had, that judgment be rendered in favor of plaintiff-in-counterclaim and against defendants-in-counterclaim (1) on the CERCLA cost recovery counterclaim in an amount equal to any response costs that have been or will be incurred by ATLANTIC RICHFIELD COMPANY in connection with the

Rico Facilities; and (2) on the CERCLA contribution counterclaim in an amount equal to any liability or costs assessed against or incurred by ATLANTIC RICHFIELD COMPANY in connection with the Rico Facilities that exceeds ATLANTIC RICHFIELD COMPANY's fair and equitable share of liability, if any.


DEFENDANT and PLAINTIFF-IN-COUNTERCLAIM, ATLANTIC RICHFIELD COMPANY, FURTHER PRAYS for all costs of this proceeding, for reasonable attorneys' fees incurred in defending against plaintiffs' claims, and in pursuing its Counterclaim, for all orders and decrees necessary in the premises and for full, general and equitable relief.

Shreveport, Louisiana, this 6th day of March, 1996.

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ATLANTIC RICHFIELD COMPANY


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY AND	§	CASE NO. CV95-2115S
CRYSTAL EXPLORATION AND	§	
PRODUCTION COMPANY,	§	
Plaintiffs,	§	
	§	
vs.	§	JUDGE STAGG
	§	
ATLANTIC RICHFIELD COMPANY,	§	
Defendant.	§	MAGISTRATE JUDGE PAYNE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Answer of Defendant Atlantic Richfield Company has been served upon plaintiffs' counsel of record, Osborne J. Dykes, III, Fulbright & Jaworski, 1301 McKinney, Suite 5100, Houston, Texas 77010-3095, and Albert M. Hand, Jr., Cook, Yancey, King & Galloway, P. O. Box 22260, Shreveport, Louisiana 71120-2260, by depositing a copy of same in the U.S. Mail, properly addressed, with adequate postage affixed thereto.

Shreveport, Louisiana, this 6th day of March, 1996.



OF COUNSEL